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LAU KEEN FAI

v.

LIM BAN KAY

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HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[ORIGINATING MOTION NO: R1-17-3-2010]
25 OCTOBER 2010

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LEGAL PROFESSION: *Professional discipline - Misconduct - Disciplinary hearing - Whether finding of misconduct perverse - Whether there was procedural unfairness or breach of rules of natural justice - Legal Profession Act 1976, s. 103D & 103E - Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994, r. 3*

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The appellant was an advocate and solicitor practicing under the name and style of Messrs Rajah Lau & Associates. Pursuant to the findings and recommendation of the Disciplinary Committee ('the DC') by an order dated 15 January 2010, the Disciplinary Board ('DB') in an exercise of the powers conferred by s. 103D of the Legal Profession Act 1976 ('the LPA') ordered the appellant to be suspended from practice as an advocate and solicitor for three years. The appellant appealed against this order of suspension under s. 103E. Briefly, the DC had found that the complainant had proved beyond reasonable doubt that (a) the appellant had drawn up sham sale and purchase agreements to cover up the actual transaction of money lending with pledging of land titles and share certificates as security for the loans which was in fact committing fraud; (b) the act of the appellant was not only dishonest but a fraudulent conduct in the discharge of his duties and (c) as a result of this fraud the complainant had suffered the loss of 22 land titles which had been transferred to one See Hong Chen. The appellant submitted that (i) the charges were not framed at all against the appellant which was highly prejudicial to the appellant; (ii) the DB in the order had not stated whether they agree or disagree with the findings of the DC hence it was null and void; (iii) the DC had taken into account documents not made available during the proceedings; (iv) the failure to cross examine an aspect of evidence should not be held against the appellant.

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Held (dismissing the appeal):

(1) The LPA does not provide specifically that the DC is required to frame a charge. Thus an omission to frame a formal charge would not amount to a breach of the LPA. There was no requirement that it ought to be framed in any particular form or that it ought to take the form of a charge framed in a criminal proceeding. What was essential was that the person against whom the misconduct was alleged was supplied with sufficient material particulars to enable him to meet the allegation. Herein, all the requirements of a charge were found in the letter of complaint that the DB had forwarded to the appellant. The appellant had had sufficient notice of the complaint against him. Despite the absence of a formal charge the appellant was able to meet the complaint lodged against him. The absence of a charge did not occasion any procedural unfairness or a breach of the rules of natural justice as the appellant had not been deprived of the opportunity to contradict the complaint. Further, there was no suggestion that the complaint in this case had not complied with the requirements of r. 3 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the 1994 Rules'). (paras 8, 10, 11 & 13)

(2) There was no requirement that the DB had to specifically state in the order that it agreed or reject the finding and recommendation of the DC. It was a question of substance rather than of form. What was crucial was that the order must state clearly the decision of the DB. There was no ambiguity in the words of the order. The appellant was informed that the DB had affirmed the finding and recommendation of the DC. The contention that the appellant did not know whether the DB had accepted or rejected the recommendation of the DC was devoid of merit. The mere omission to state in the order whether the DB accepted or rejected the findings and recommendation of the DC was insufficient to invalidate the order. (para 17)

(3) The documents referred to by counsel for the appellant bore no connection at all to the appellant. The documents contained no extraneous matters detrimental to the appellant. The documents were not adverse to him. It was the appellant's submission that these documents must have

A influenced the DC in making its findings and recommendation. However, there was no material before the court to support this contention, thus rendering it baseless. (para 19)

(4) The right to cross examine is provided for under r. 23 of the
B 1994 Rules and it was submitted that the reason was to give parties the opportunity to either accept or rebut the evidence raised. Therefore, failure to cross examine would result in acceptance of the truth of the evidence (*Hoo Lin Coln v. Wong Weng Who & Anor*). If a party fails to cross examine a witness
C in respect of a material fact that relates to his case, there is no basis for that party to later submit that the unchallenged evidence ought not to be accepted as true. This court was unable to agree with counsel for the appellant that the failure to cross examine should not be held against the appellant.
D (para 21)

(5) Having considered the evidence in totality, there was no breach of natural justice or breach of procedural fairness in the conduct of the proceedings by the DC. It could not be
E said that there was no evidence to support the findings of the DC. The DB had considered the seriousness of the misconduct committed by the appellant and had decided that a suspension from practice for three years was appropriate. (para 22)

F **Case(s) referred to:**

Abdul Raub v. The Attorney General [1982] 1 LNS 68 CA ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

An Advocate v. BB Haradara & Ors [1988] INSC 308 ***(refd)***

G *Au Kong Weng v. Bar Committee, Pahang [1980] 1 LNS 4 FC* ***(refd)***

Aziana Uda Bahari v. Gan Kong You [2009] 8 CLJ 438 HC ***(refd)***

Carapiet v. Derderian AIR [1961] Cal 359 ***(refd)***

Chan Chow Wang v. Law Society of Singapore [1978] 1 LNS 248 PC ***(refd)***

Colin Kenneth McCoan v. General Medical Council [1964] 1 WLR 1107 ***(refd)***

H *Dixon v. Commonwealth of Australia 61 Australian Law Reports 173* ***(refd)***

Hj Ali Hj Othman v. Telekom Malaysia Bhd [2003] 3 CLJ 310 CA ***(refd)***

Hoo Lin Coln v. Wong Weng Woh & Anor [2006] 3 CLJ 939 HC ***(refd)***

Keith Sellar v. Lee Kwang And Tennakoon V Lee Kwang [1980] 1 LNS 36 FC ***(refd)***

I *Law Society of Singapore v. Lim Cheong Peng [2006] 4 SLR 360* ***(refd)***

Leeson v. General Council of Medical Education and Registration [1889] 43 Ch D 366 ***(refd)***

Leong Pui Kun v. Lembaga Jurutera Malaysia [2002] 4 AMR 4631 ***(refd)***
Lim Peng Ee Joyce v. Singapore Medical Council [2005] 3 SLR 709 ***(refd)***
Mogana Suntahari Subramaniam v. Khadijah Yusof & Anor [2009] 7 CLJ 444 HC ***(refd)***
Mohd Nawi Ya'akub v. P/ACP W Ramasamy, Ketua Cawangan Khas IPK Kelantan & Anor [2009] 1 CLJ 475 CA ***(refd)***
Ng Hock Cheng v. Pengarah Am Penjara & Ors [1998] 1 CLJ 405 FC ***(refd)***
Othman Ali v. Telekom Malaysia Berhad [2003] 1 LNS 659 HC ***(refd)***
Rohana Ariffin & Anor v. Universiti Sains Malaysia [1989] 1 MLJ 487 ***(refd)***
Tanjong Jaga Sdn Bhd v. The Minister of Labour and Manpower & Anor [1987] 2 CLJ 119; [1987] CLJ (Rep) 368 SC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 100(3)(a), 103A(1)(a), 103D, 103E
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal And Disciplinary Committee) Rules 1994, rr. 3(2), 6(1)(b), 23

For the appellant - Joseph Yeo (T Gunaseelan & Varghese Onny with him); M/s Joseph Yeo
For the respondent - KK Nga; M/s Ngeh & Co
For the intervener - Trevor George (T Kavitha with him); M/s Trevor George Partnership

Reported by Suhainah Wahiduddin

JUDGMENT

Aziah Ali J:

[1] The appellant is an advocate and solicitor practising under the name and style of Messrs Rajah Lau & Associates at No. 15, Jalan Bunga Pekan 2, Taman Sri Banting, Banting, Kuala Langat, Selangor. Pursuant to the findings and recommendation of the disciplinary committee ("the DC") by an order dated 15 January 2010 the disciplinary board ("the DB") in exercise of the powers conferred by s. 103D of the Legal Profession Act 1976 ("the LPA") ordered the appellant to be suspended from practice as an advocate and solicitor for a period of three years to take effect 21 days from the date of the order and to expire on 5 February 2013 (exh. LKF1). This is an appeal under s. 103E against the order of suspension. I dismissed the appeal with costs of RM3,000 each to the respondent and the intervener.

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Background

[2] The respondent lodged a complaint of misconduct against the appellant on 14 April 2008. The details of the misconduct read as follows:

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> Some time in September/October I have executed/signed certain agreements with one See Hong Chen in the office of the said lawyer, Mr Lau Keen Fai. I too in December 2004 executed/ signed certain agreements and certain share certificate transfer forms of a company known as "Tian Soon Agriculture Sdn Bhd"
C in favour of one See Hong Chen and both the said agreements and the said transfer forms are kept in escrow by the said solicitor who acted for me and the said See Hong Chen.
>
> Till to date despite repeated request and personally calling to the said Solicitors office for a stamped copy of the said agreements
D executed by me the said Solicitors have not extended a copy to me.
>
> On the 19-5-05 I through a Solicitors caused a notice dated 19-5-05 to the said Solicitors for a copy of the same and till to date the said Solicitors have not replied to my Solicitors notice
E dated 19-5-05. A copy of the said notice is enclosed for your reference.
>
> After the letter by my lawyer I now come to know that my 22 titles are all transferred to the said See Hong Chen even though
F I have fully paid all the loan I borrowed from See Hong Chen.

[3] By letter dated 23 June 2008 the DB forwarded the said complaint to the appellant and requested a written explanation. Pursuant to the request the appellant requested for time of two months to prepare the explanation but the DB granted an
G extension of one month. The appellant forwarded his written explanation by a letter dated 14 August 2008. By letter dated 18 November 2008 the appellant was informed by the DB that the DB has considered the complaint and the appellant's explanation and has decided to appoint a DC to formally
H investigate the complaint and to submit a report to the board pursuant to s. 100(3)(a) and s. 103A(1)(a) of the LPA. At the hearing before the DC, the complainant, the appellant, See Hong Chen and the complainant's son gave evidence.

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[4] The DC found that the complainant had proved beyond reasonable doubt that:

(a) that the appellant had drawn up three sale and purchase agreements to cover up the actual transactions which were a loan of RM2 million in respect of the 22 titles and RM6.5 million in respect of the 300,000 shares;

(b) the appellant had transferred the 22 titles to See Hong Chen & Sons Sdn Bhd when the complainant had paid See RM10.2 million for the loan of RM8.5 million and had not returned the 300,000 shares to the complainant;

(c) the act of the appellant was not only dishonest but fraudulent conduct in the discharge of his duties;

(d) drawing up sham sale and purchase agreements to cover up the actual transaction of money lending with pledging of land titles and share certificates as security for the loans is in fact committing fraud;

(e) as a result of this fraud the complainant suffered loss of the 22 titles;

(f) the appellant perpetrated the fraud till the very end.

[5] The DC found the complainant a reliable and truthful witness but the DC found the appellant evasive and most of his answers were denials. The DC found that the transactions between the complainant and See Hong Chen ("See") were in fact money lending transactions with pledging of securities and not sale and purchase transactions. The DC also felt that the appellant knew the actual nature of the transactions.

Grounds Of Appeal

No Charge Framed

[6] Counsel for the appellant submits that charges were not framed at all against the appellant which is highly prejudicial to the appellant (*An Advocate v. BB Haradara & Ors* [1988] INSC 308; [1989] AIR 245). It is submitted that if at all any charge was framed, it was at the end of the proceedings and was never shown to the appellant. Counsel submits that the appellant must know precisely what he is being charged for (*Lim Peng Ee Joyce v.*

A *Singapore Medical Council* [2005] 3 SLR 709; *Othman Ali v. Telekom Malaysia Berhad* [2003] 1 LNS 659; *Leong Pui Kun v. Lembaga Jurutera Malaysia* [2002] 4 AMR 4631; *Law Society of Singapore v. Lim Cheong Peng* [2006] 4 SLR 360). Even though the appellant is an advocate and solicitor, counsel submits that it is incumbent
B on the DC to frame a proper charge.

[7] For the respondent it is submitted that though the initial letters from the DB to the appellant did not stipulate the charges, the complaint was forwarded to the appellant and he was fully
C aware of the complaint lodged against him. It is submitted that under the LPA there is no requirement for charges to be given (*Aziana Uda Bahari v. Gan Kong You* [2009] 8 CLJ 438). Similarly counsel for the intervener submits that under the LPA there is no provision for a charge to be put forward and the absence of a
D charge ought not to be held against the DB (*Mogana Suntahari Subramaniam v. Khadijah Yusof & Anor* [2009] 7 CLJ 444). Counsel further submits that at all times in the proceedings before the DC the appellant was represented by counsel and no issue was raised that the complaint was not clear or insufficient or that
E formal charges should have been preferred. It is submitted that the absence of formal charges would not prejudice the appellant to the extent of vitiating the entire proceedings.

[8] The LPA does not provide specifically that the DC is
F required to frame a charge. Thus an omission to frame a formal charge would not amount to a breach of the LPA. There cannot be a breach where no such requirement exists. Although under the LPA there is no requirement for a charge to be framed, natural justice requires that a person like the appellant facing disciplinary
G proceedings for misconduct to be informed sufficiently of the facts and particulars of the misconduct complained of to enable him to explain and exculpate himself. The right to be heard is an integral part of the rules of natural justice.

[9] Domestic tribunals conducting an inquiry are by no means
H bound by the strict rules which apply to criminal trials or must follow the procedure of a court of law or adopt procedures analogous to that of a court of law unless proscribed by statutory provisions especially applicable to that particular domestic tribunal (*Mohd Nawi Ya'akub v. P/ACP W Ramasamy, Ketua Cawangan*
I *Khas IPK Kelantan & Anor* [2009] 1 CLJ 475. In *Haji Ali Haji Othman v. Telekom Malaysia Bhd* [2003] 3 CLJ 310, Gopal Sri

Ram JCA, adopted the view expressed by L' Heureux-Duke' J in the Supreme Court of Canada in *The Board of Education of the Indian Head School v. Knight* as follows: A

> It must not be forgotten that every administrative body is the master of its own procedure and need not assume the trappings of a court. The object is not to import into administrative proceedings the rigidity of all the requirements of natural justice that must be observed by a court, but rather to allow administrative bodies to work out a system that is flexible, adapted to their needs and fair. B C

[10] Insofar as the issue of a charge is concerned, I am of the view that there is no requirement that it ought to be framed in any particular form or that it ought to take the form of a charge framed in a criminal proceeding. What is essential is that the person against whom the misconduct is alleged is supplied with sufficient material particulars to enable him to meet the allegation. In *Leeson v. General Council of Medical Education and Registration* [1889] 43 Ch D 366 Bowen LJ says: D

> With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. E F

It is a matter of substance rather than of form. In the case of *Tanjong Jaga Sdn Bhd v. The Minister of Labour and Manpower & Anor* [1987] 2 CLJ 119; [1987] CLJ (Rep) 368 the court said:

> ... the rules are not inflexible principles and may vary in their content in the circumstances of the case and in their ambit in the context of their application ... proceedings must not be looked at as would the proceedings of a court of law. What is more important is not the form but the substance. G

[11] In the present case I am of the view that all the requirements of a charge are found in the letter of complaint that the DB has forwarded to the appellant. Even if a formal charge has to be drawn up, such charge would necessarily be a regurgitation of the facts and particulars contained in the complaint. Further there is no suggestion that the complaint in H I

A this case has not complied with the requirements of r. 3 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal And Disciplinary Committee) Rules 1994 ("the 1994 Rules") which provides as follows:

B 3. Contents of complaints

(1) A complaint shall be made in writing by the complainant or his solicitor.

(2) A complaint shall contain the following:

C (a) the full name, identity card or passport number and address of the complainant;

(b) the facts of the complaint;

D (c) copies of any documents that the complainant proposes to rely on in support of his complaint;

(d) the signature of the complainant;

(e) the name and address of the complainant's solicitor, if any.

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By necessary implication the director of the complaints secretariat must have satisfied himself that the requirements of r. 3(2) have been complied with as he was obliged to do by r. 6(1)(b) of the 1994 Rules. It is only upon being satisfied that there has been the F requisite compliance of r. 3 that the director would register the complaint.

[12] The case of *An Advocate v. BB Haradara & Ors (supra)* referred to by counsel for the plaintiff is a case decided in the G context of the Bar Council of India Rules. It is stated in the judgment that the State Bar Council, after calling for the comments of the appellant, straightaway proceeded to record the evidence of the parties. No charge was framed. However what can be determined from the said case is that despite the failure of the H State Bar Council to frame a charge, the decision of the court to remit the matter back to the Bar Council of India was not specifically for failure to frame the charge though the court wished that the State Bar Council had framed a charge. The court found that the State Bar Council amongst others had failed to address I questions that arose and had not considered the applicability of the doctrine of benefit of doubt and the need for establishing the

facts beyond reasonable doubt. I find the case of not much assistance other than stating the reasons why charges ought to be drawn up. Further it is unclear whether a rule similar to r. 3 of the 1994 Rules is found in the Bar Council of India Rules.

[13] Based on the appellant's letter of explanation dated 14 August 2008 it is apparent that he has sufficient notice of the complaint against him. I agree with counsel for the intervener that if the appellant had any doubt as to the complaint, he ought to have raised it with the DB or the DC but he did not. The appellant had ample opportunity to raise his objection to the complaint, if he had any. In fact the evidence shows that the appellant had requested for more time to put up his explanation. Subsequently upon being notified that a DC has been appointed to investigate the complaint, the appellant wrote a letter dated 23 January 2009 to the chairman of the DC "to put matters in their proper perspective so that you will have a clear view of the transaction involved.". The appellant further stated that "This is also an explanation to the said complaint and to the complainant's letter of 20 October 2008 on the same.". Thus on the evidence I find that the conduct of the appellant is inconsistent with a person who does not have sufficient knowledge of the complaint against him. Despite the absence of a formal charge the appellant was able to meet the complaint lodged against him. I find that the absence of a charge did not occasion any procedural unfairness or a breach of the rules of natural justice as the appellant has not been deprived of the opportunity to contradict the complaint.

Order Of The DB Dated 15 January 2010 Is Null And Void

[14] Counsel for the appellant submits that in the order the DB has not stated whether they agree or disagree with the finding of the DC. It is submitted that as the proceedings are quasi criminal in nature there must be strict compliance with s. 103D. Counsel submits that the appellant must know whether the DB has accepted or rejected the recommendation of the DC in order for him to decide whether or not to appeal.

[15] Section 103D provides:

> 103D. Consideration by the Disciplinary Board of the report of the Disciplinary Committee.

A (1) After consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order affirming or rejecting the finding or recommendation of the Disciplinary Committee.

B (2) The Disciplinary Board may in appropriate cases impose a greater punishment than that recommended by the Disciplinary Committee.

C (3) Where the Disciplinary Board does not agree with the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall make such other order as it deems just.

D (4) Before the Disciplinary Board makes an order under subsection (2) or any order that is likely to be adverse against an advocate and solicitor under subsection (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

E (5) Where the Disciplinary Board makes an order that the advocate and solicitor should make restitution to the complainant of any sum found due and owing to the complainant, it may stipulate the time within which such restitution ought to be made, failing which the Disciplinary Board may impose on the advocate and solicitor a higher punishment than that previously imposed.

F (6) A sum ordered by the Disciplinary Board under subsection (5) to be restituted may be recoverable by the complainant as a civil debt.

[16] In the letter from the DB to the appellant dated 22 January 2010 forwarding a copy of the order dated 15 January 2010 G (exh. LKF1) it is stated as follows:

> We write to advise that the Disciplinary Board considered the above complaint and the report of the Disciplinary Committee at its meeting on 15.1.2010. The Board **affirmed** the finding of liability and recommendation on punishment by the Disciplinary H Committee and has ordered that you be suspended from practice as an Advocate and Solicitor of the High Court of Malaya for a period of three (3) years. (emphasis added)

[17] There is no requirement that the DB has to specifically state I in the order that it agrees or reject the finding and recommendation of the DC. Again it is a question of substance

rather than of form. What is crucial is that the order must state clearly the decision of the DB. I find no ambiguity in the words of the order. The appellant was informed that the DB has affirmed the finding and recommendation of the DC. I find the contention that the appellant did not know whether the DB has accepted or rejected the recommendation of the DC as devoid of merit. In any event I am of the view that the mere omission to state in the order whether the DB accepts or rejects the findings and recommendation of the DC is insufficient to invalidate the order.

Failure To Furnish The Complainant's Statement Dated 16 June 2009

[18] It is submitted for the appellant that the DC had taken into account documents not made available during the proceedings. The documents referred to relate to the complainant's complaint against another advocate and solicitor, not the appellant. Counsel submits that there is no affidavit from any of the members of the DC that they were not influenced by these documents. It is submitted that the risk is enough (*Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1989] 1 MLJ 487). Counsel submits that even though the complaint was not against the appellant the documents would have raised sympathy towards the complainant or could have influenced the DC members. The benefit of doubt ought to be given to the appellant. It is further submitted that the notes of proceedings do not show that these documents were taken into consideration. Therefore these documents could have been given to the DC after proceedings had concluded. Counsel for the respondent refers to the case of *Chan Chow Wang v. Law Society of Singapore* [1978] 1 LNS 248 where the Privy Council held that an inference of fact must to be drawn from evidence before the disciplinary committee and the High Court. It is submitted that in the present case the report of the DC made no reference at all to these documents which are unrelated to the apellant's case. For the Intervener counsel also refers to the fact that the documents relate to another complaint by the Respondent against a different advocate and solicitor.

[19] I find that the documents referred to by counsel for the appellant bears no connection at all to the appellant. The documents contained no extraneous matters detrimental to the appellant. The only common factor between those documents and the appellant's case is the complainant. In *Dixon v. Commonwealth*

of Australia 61 Australian Law Reports 173 referred to by appellant's counsel, the material that was available to the public service board but which the appellant was not made aware of the materials that were adverse to him. The court found that even though the appellant had made submissions earlier, the public service board failed to give the appellant a further opportunity of being heard to which the rules of natural justice entitled him. *Unlike Dixon's* case, the documents referred to by the appellant's counsel have no connection to the appellant or his case. These documents were not adverse to him. Even the wrongful admission of a statement is insufficient to vitiate disciplinary proceedings if a fair hearing had been conducted. In the Singapore Court of Appeal case of *Abdul Raub v. The Attorney General* [1982] 1 LNS 68 Wee Chong Jin CJ said *inter alia*:

> Lastly, it was contended that the admission by ASP Francis Chan at the disciplinary proceedings before him of two written statements were in breach of reg. 7(5) and (6) of the Police Regulations 1959 and that such breach rendered the proceedings a nullity and the dismissal null and void as being contrary to the rules of natural justice. We rejected this contention. The wrongful admission of a written statement as evidence is not, in our opinion, per se contrary to the principles of natural justice. In the present case the appellant had a fair hearing. He was dismissed after he had first been told what was alleged against him and hearing his defence or explanation.

Likewise even the absence in the DC's determination of any mention of the standard of proof does not justify an inference that the DC had failed to have regard to it (*Au Kong Weng v. Bar Committee, Pahang* [1980] 1 LNS 4).

[20] Counsel for the appellant submits that these documents must have been made available to the DC after hearing has ended and that such documents must have influenced the DC in making its findings and recommendation. The question is whether there is any material before the court to support this contention. I find there is none thus rendering the contention baseless.

Failure To Cross Examine The Complainant

[21] Counsel for the appellant submits that failure to cross examine an aspect of evidence should not be held against the appellant and the evidence accepted to be true. For the Intervener it is submitted that failure to cross examine a witness

on material evidence would result in acceptance of its truth. The right to cross examine is provided for under r. 23 of the 1994 Rules and it is submitted that the reason is to give parties the opportunity to either accept or rebut the evidence raised. Therefore failure to cross examine would result in acceptance of the truth of the evidence (*Hoo Lin Coln v. Wong Weng Woh & Anor* [2006] 3 CLJ 939). Counsel for the intervener submits that it is too late in the day for the appellant to argue otherwise. I agree with counsel. The principle is that if a party fails to cross examine a witness in respect of a material fact that relates to his case, there is no basis for that party to later submit that the unchallenged evidence ought not to be accepted as true. In *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 the Court of Appeal referred to the case of *Carapiet v. Derderian* AIR [1961] Cal 359 where at p. 362 Mukharji J expressed the principle on cross examination *inter alia* as follows:

> It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponents witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiffs account in its entirety.

For the reasons above I am unable to agree with counsel for the applicant that the failure to cross examine should not be held against the appellant.

[22] I find sufficient evidence that the appellant was accorded a reasonable opportunity of being heard by the DC. He was supplied with the complaint. He was aware of what was complained against him. He was given ample time to provide his explanation and to contradict the complaint. At the hearing before the DC the appellant was represented by counsel. He was accorded a full hearing. He was given the opportunity to cross examine the complainant and the complainant's witness. He was given the opportunity to give his explanation. At the end of the hearing his counsel made submissions. Pursuant thereto the DC made its findings and recommendation. The appellant contends that the findings of the DC were perverse. However as submitted

A by counsel for the intervener, the DC concluded that there is evidence of misconduct in the transfer of the land titles and the shares. Having considered the evidence in totality, I find no breach of natural justice or breach of procedural fairness in the conduct of the proceedings by the DC. It cannot be said that
B there is no evidence to support the findings of the DC.

[23] On the issue of punishment I refer to the case of *Keith Sellar v. Lee Kwang And Tennakoon V Lee Kwang* [1980] 1 LNS 36 where the Federal Court referred to the case of *Colin Kenneth McCoan v.*
C *General Medical Council* [1964] 1 WLR 1107 in which the Privy Council said as follows:

> ... their Lordships agree with Lord Goddard CJ *Re A Solicitor* [1936] 1 LNS 43 when he said that it would require a very strong case to interfere with sentence in such a case, because the
D Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.
>
> No general test can be laid down, for each case must depend entirely on its own particular circumstances.

E The Federal Court adopted the same approach in *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405 where in his judgment Peh Swee Chin FCJ (as he then was) said:

> Just like a professional body being the best tribunal to judge the
F seriousness of misconduct of its members, in a similar vein, an employer, including a government is the best person to judge similarly the seriousness of misconduct of an employee.

In the present case the DB has considered the seriousness of the misconduct committed by the appellant and has decided that a
G suspension from practice of three years is appropriate. I have no reason to disagree.

[24] For the aforementioned reasons the appeal is dismissed with costs of RM3,000 each to the respondent and the intervener.

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